

PETITIONER:
UNION PUBLIC SERVICE COMMISSION

Vs.

RESPONDENT:
S. PAPAIAH & ORS.

DATE OF JUDGMENT: 11/09/1997

BENCH:
A.S. ANAND, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

DR. ANAND J

Special leave granted.

Union Public Service Commission (hereinafter the UPSC), appellant herein, conducted Indian Forest Service Examination for 1992. One of the centres for the examination was the Urdu-Hall sub-centre at Hyderabad. Respondent No.1 appeared as a candidate and took the examination from the said hall. On September 27, 1993 the UPSC sent to the joint Director, CBI, a complaint alleging the use of unfair means at the examination by respondent No.1 in collusion with the supervisor incharge of the said centre-respondent No.2. It was pointed out by the UPSC in the complaint that it had received a pseudonymous letter disclosing that answer sheets were written by the candidate-respondent No.1 at a specified address in Gandhi Nagar, Hyderabad, outside the examination hall. It was also stated that the UPSC had found certain factors suggesting a nexus between the candidate-respondent No.1 and the supervisor incharge, after an examination of answer books, answer and certain other documents. It was then stated that respondent No.1 appears to have adopted the same modus-operandi on an earlier occasion too by appearing at the Urdu-Hall sub-centre instead of at the allotted centre for 1993 Civil Services (Preliminary) exam held on June 13, 1993. The UPSC requested the CBI to investigate the case on a priority basis and to intimate the results of the investigation to it. The CBI on receipt of the complaint registered it as complaint No.17/14/93-C.IV and on October 19, 19, 1993, a regular case was registered by the CBI on the basis of the aforesaid complaint being Crime No. 3(S)/93-SIU.II against respondent Nos. 1,2 and 3 for offences under Sections 120-B, 420, 381, 468 and 478 I.P.C. The investigation was entrusted to Shri T.N. Rao, S.P.

It transpires from the record that on September 12, 1994, the CBI filed a final report under Section 173 Cr.p.c. in the court of the Vth Metropolitan Magistrate, Hyderabad, before whom the FIR had been lodged, seeking closure of the case. The CBI in spite of the request to it by the UPSC did not inform it about the filing of the final report seeking

closure of the case. On December 5, 1994, the Vth Metropolitan Magistrate returned the final report because copy of the notice required to be issued to the complainant by the CBI had not been filed along with it, though on behalf of the CBI it was asserted that it had informed the UPSC regarding the filing of the closure report. On December 24, 1994, final report was resubmitted by the CBI to the Court of Vth Metropolitan Magistrate along with a copy of the notice sent by the CBI to the appellant-complainant. Once again, on December 31, 1994 the Vth Metropolitan Magistrate returned the final report to the CBI, seeking proof of service of notice on the de-facto complainant. In his order the learned Metropolitan Magistrate further directed the CBI that in the notice to be served upon the UPSC, it should be clearly indicated that the UPSC may file its objections to the final report. On January 6, 1995 the CBI, it appears, resubmitted the final report together with an acknowledgment of the receipt of notice from the UPSC dated December 19, 1994. In the notice, the receipt of which was acknowledge by the UPSC on December 19, 1994 and copy whereof was filed by the CBI in the Court on January 6, 1995, the CBI had not informed the UPSC that it could file objections to the final report as directed by the learned Magistrate. The CBI, for reasons best known to it, did not comply with the order of the Vth Metropolitan Magistrate dated December 31, 1994. Neither a fresh notice was issued nor was the UPSC told that under orders of the learned Metropolitan Magistrate it could file its objections. The final report was once again returned by the Vth Metropolitan Magistrate to the CBI on January 12, 1995, as the statements of the witnesses, copies of the documents including the reports of the hand writing experts etc. had not been filed by the CBI along with the closure report. While matters rested thus, the UPSC addressed a letter to Shri K Vijaya Rama Rao, Director, central Bureau of Investigation, New Delhi, on January 13, 1995 pointing out that CBI had informed it (vide its letter dated December 14, 1994) that it had decided to close the case under Section 173 cr. P.C. and that the closure report had been filed in the court. The UPSC pointed out that the investigation had not been carried out properly and the filing of the closure report was therefore not justified. The UPSC asserted that there was need for reinvestigation because some of the vital points raised in its complaint had not been touched at all by the investigating officer during the investigation. As many as six such points were brought to the notice of the Director, CBI. It was requested that the case be reinvestigated by the CBI at some "higher level". This communication was in the nature of a "protest petition" to the CBI in response to the notice from the CBI to the UPSC dated December 14, 1995 informing it that the CBI had filed closure report of the case before the learned Magistrate. While the UPSC was awaiting further communication from the CBI in that behalf, the CBI it appears resubmitted the closure report on February 24, 1995. On March 16, 1995, the Vth Metropolitan Magistrate, accepted the final report submitted by the CBI and closed the file without any opportunity being provided to the UPSC to have its say.

Labouring under the impression that the CBI would have started further investigation in the case in view of its letter dated January 23, 1995 and oblivious of the fact that the CBI had resubmitted the closure report, the UPSC on April 6, 1995 issued a reminder to the Director, CBI vide D.O.N.F.17/14/93-CI enquiring about the "reinvestigation" of the case. On April 26, 1995, the Deputy Inspector General

of Police, CBI wrote a letter to the Secretary, UPSC, bearing No.1881/3/(S)/93-SIU.II in which it was stated that the closure report had since been filed in the court of the Vth Metropolitan Magistrate on February 24, 1995 under Section 173 Cr.P.C. along with all the original documents including the statements of the witnesses and that the Court had accepted the closure report and had closed the file. A copy of the order of the Court accepting the file. A copy of the order of the court accepted the closure report and has closed the file. A copy of the order of the Court accepting the closure report was enclosed with the communication. Referring to the grievance of the UPSC, as detailed in its letter dated January 23, 1995 addressed to the Director, the communication stated:

"Regarding your queries raised vide your DO letter No.F 17/14/93-C.VI dt/ 23.1.95, it is submitted that in case the UPSC desires that the case should be re-investigated on the points raised by them, the concerned court has to be moved accordingly, as the CBI's Closure Report has already been accepted by the Court."

On receipt of the above communication from the CBI, the UPSC filed a Criminal Misc. Petition No.2040 of 1995 in R.C. No.2 of 1995 in the Court of the Vth Metropolitan Magistrate at Hyderabad. In the petition, after detailing the facts, it was submitted that the investigation carried out by the CBI had been sketchy and that many vital points mentioned in the complaint and high lighted in its letter dated January 23, 1995 addressed to the Director, had not been investigated properly. The UPSC submitted that no notice had been issued by the learned Metropolitan Magistrate to the UPSC before accepting the final report and therefore the order of acceptance of the final report was vitiated. It was requested that further high level investigation was necessary, as the case involved alleged cheating during an All India Services Examination and was a matter of general public interest. The court was requested to order re-investigation of the case in the interest of justice. In response to the petition, the CBI filed its reply stating that since the UPSC had not filed its objections to the final report, it could not be now permitted to make any grievance about the acceptance of the final report and that the petition be rejected. The court rejected the petition of the UPSC observing that it has accepted the final report filed by the CBI on March 16, 1995, since the appellant had not filed its objections to the acceptance of the final report and as such it could not complain. Even though the Court, recorded in its order that it had not given any notice to the appellant before accepting the final report filed by the CBI on March 16, 1995 yet it declined to order "reinvestigation" or further investigation. The Court opined that since an order accepting final report was a judicial order and not an administrative order, therefore, it had no power to review such an order passed by it "rightly or wrongly" and that the UPSC could file a revision petition seeking appropriate order against the acceptance of final report from the revisional court. The UPSC then filed a revision petition before the 1st additional Metropolitan Sessions Judge at Hyderabad on December 11, 1995. Vide order dated March 8, 1996 Criminal Revision Petition No.2 of 1995 was dismissed by the revisional court. The learned Ist

Additional Metropolitan Session Judge agreed with the Vth Metropolitan Magistrate that the Magistrate had no power to review its order dated March 16, 1995 and observed that since the learned Magistrate had accepted the final report by following proper procedure it did not require any interference. Referring to the observations of this Court reported in AIR 1985 SC 1285 to the effect that an opportunity is required to be given to both sides by the court before dropping criminal proceedings against persons mentioned in the FIR, it was observed:

"In the present case, notice was given to the petitioner as directed by the Lower Court and the petitioner having not filed any objections to the Final Report, came up with a review application subsequently, which is not maintainable".

It is this order of the learned Ist Additional Metropolitan Session Judge which has been put in issue in the present appeal.

We have traced the detailed facts of the case with a view to test the correctness of the orders of the Magistrate dated March 16, 1995 and November 4, 1995 and that of the revisional court dated March 8, 1996 since facts assume great significance in this case.

Mr. Altaf Ahmad, the learned ASG appearing for the UPSC submitted that the observations of the learned Sessions Judge that notice had been issued to the appellant "as directed by the lower court" and in spite of that notice, the appellant had not filed any objections was clearly erroneous and against the record. Learned counsel submitted that the Vth Metropolitan Magistrate did not call upon the appellant at any point of time to file objections to closure report and notice whatsoever was issued by the Court to the appellant before accepting the final report and though this factual position had been noticed by the court though this factual position had been noticed by the learned Magistrate himself in its order in Cr.M.P.No. 2040 of 1995, the revisional court based its order on wrong factual assumptions. The omission to issue notice to the appellant before accepting the final report and closing the case, argued the learned ASG, vitiates the order of the court accepting the final report and the case requires to be further investigated.

In the present case, admittedly, no notice was issued by the Vth Metropolitan Magistrate to the appellant before accepting the final report submitted by the CBI and deciding not to take cognizance and drop the proceedings. This omission vitiates the order of the learned court accepting the final report. The issue is no longer res-integra. A three Judge Bench of this Court in the case of *Bhagwant Singh vs. Commissioner of Police & Anr.* 91985) 2 SCC 537 speaking through Bhagwati, J while dealing with a situation arising out of the report being forwarded by an officer-in-charge of a police station to the Magistrate under sub-section 2(i) of Section 173, stating the no offence appears to have been committed, opined that on receipt of such a report the Magistrate can adopt one of the three courses i.e. (1) he may accept the report and drop the proceedings or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section 3 of Section 156. The bench, dealing with the first option of dropping the proceedings went on to say:

"There can, therefore, be no doubt that when, on a consideration of the report made by the officer-in-charge of a police station under sub-section (2) (i) of Section 173, the Magistrate is and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report."

(emphasis supplied)

As per the law laid down in Bhagwant Singh's case (supra), the issuance of a notice by the Magistrate to the informant at the time of consideration of the final report is a "must". This binding precedent which is the law of the land, has not been followed by the Vth Metropolitan Magistrate and was wrongly ignored by the revisional court also.

The argument of learned counsel for the respondent that since the CBI had issued a notice to the appellant, it should be deemed to be sufficient compliance with the requirement of law does not appeal to us. In the first place the issuance of notice by the CBI to the appellant was not a substitute for the notice which was required to be given by the Magistrate in terms of the judgment in Bhagwant Singh's case (supra). The CBI also did not issue any fresh notice to UPSC before it resubmitted the final report to the learned Magistrate on February 24, 1995. Learned Magistrate could not in any event 'delegate' to the investigating agency its function of issuing notice. Moreover, when law requires a particular thing to be done in a particular manner, it must be done in that manner and in no other manner. That part, we find that the order of the learned Magistrate accepting the closure report suffers from another serious infirmity.

The appellant had communicated to the Director, CBI certain defects in the investigation on January 23, 1995 and had pointed out as many as six shortcomings necessitating reinvestigation but the CBI did not bring that fact to the notice of the Vth Metropolitan Magistrate while submitting the final report on February 24, 1995 before the Magistrate decided to accept the final report submitted by the CBI and close the file on March 16, 1995. It was, to say the least, improper on the part of the investigating officer of the CBI to have withheld a vital document dated January 23, 1995, addressed to the Director, CBI which communication in our view was in the nature of a "protest petition", from the learned Magistrate while resubmitting the report on February 24, 1995. In all fairness, the investigating agency should

have brought that communication to the notice of the learned Metropolitan Magistrate before resubmitting the final report for its acceptance. The withholding of vital information from the learned Metropolitan Magistrate while resubmitting the final report along with various documents on February 24, 1995, for reasons best known to the investigating officer, has created a doubt in our minds about the fairness on the part of the investigating officer while undertaking the investigations. Had the contents of the communication of the appellant dated January 23, 1995 been brought to the notice of the learned Magistrate, the possibility that he may not have agreed to drop the proceedings cannot be ruled out. This 'lapse', deliberate or inadvertent, also renders the order of March 16, 1995 bad.

The appellant brought the contents of its communication dated January 23, 1995 to the notice of the learned Metropolitan Magistrate through its Misc. Petition No. 2040 of 1995 seeking "reinvestigation" but the learned Magistrate, rejected the petition vide order dated November 4, 1995 observing that "rightly or wrongly that Court had passed an order and it had no power to review the earlier order". Here again the learned Magistrate fell into an error. He was not required to "review" his order. He could have ordered "further investigation" into the case. It appears that the learned Metropolitan Magistrate over-looked the provisions of Section 173(8) which have been enacted to take care of such like situations also. That provision reads:-

"173(8) - Nothing in this section shall be deemed to preclude further investigation in section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

The Magistrate could, thus in exercise of the powers under Section 173(8) Cr.P.C. direct the CBI to "further investigate" the case and collect further evidence keeping in view the objections raised by the appellant to the investigation and the 'new' report to be submitted by the investigating officer would be governed by sub-section (2) to (6) of Section 173 Cr.P.C. The learned Magistrate, failed to exercise the jurisdiction vested in him by law and his order dated November 4, 1995 cannot be sustained.

The learned Sessions Judge also committed an error in dismissing the revision petition filed by the appellant. He also failed to take into consideration the provisions of Section 173(8) Cr.P.C. The revisional court also committed errors on questions of fact. The learned Sessions Judge erroneously observed that notice regarding the filing of final report had been issued to the appellant along with a copy of the final report calling upon it to file objections. On facts these observations are incorrect. Neither any notice was issued to the appellant by the Court nor was the appellant ever called upon to file objections to the final report by the Court. Even in the notice issued by the CBI

on December 14, 1994 for whatever it is worth, the UPSC was not called upon to file objections, if it so desired. Besides the learned Sessions Judge also failed to consider the effect of withholding by the investigating agency of the "objections" of the appellant contained in its communication dated January 23, 1995 at the time of resubmission of the closure report in February 1995. The learned Sessions Judge, thus, failed to exercise his revisional jurisdiction properly and his order dismissing the revision petition filed by the appellant in the established facts and circumstances of the case cannot be sustained.

Thus, for what we have said above we are of the opinion that the learned Magistrate was not justified in accepting the final report of the CBI and closing the case without any notice to the appellant and behind its back. The order of the learned Magistrate dated March 16, 1995 closing the case and of November 4, 1995 dismissing the petition filed by the appellant as well as the order of the learned Sessions Judge dated March 8, 1996 dismissing the revision petition are set aside. The matter is remitted to the learned Metropolitan Magistrate for its disposal in accordance with law. The learned Metropolitan Magistrate shall, in the larger public interest to ensure the purity of the examination conducted by the UPSC for All India Services, to select the best talent, issue directions under Section 173(8) Cr.P.C. to the CBI to further investigate the case and collect further evidence keeping in view the points raised by the appellant in its communication addressed to the Director, CBI dated January 23, 1995 (supra) (treating it as a 'protest petition') and then proceed further in the matter. It would be appropriate that further investigation to be carried out by the CBI under Section 173 (8) Cr.P.C. is directed to be carried out by an officer, other than the officer who had earlier investigated the case and filed the final report seeking closure of the case. The learned Metropolitan Magistrate shall issue directions to that effect also to the investigating agency when calling upon them to undertake further investigation under Section 173 (8) Cr.P.C. The CBI shall be directed to complete the investigation expeditiously and proceed in the matter in accordance with law in the light of the observations made by us above.

Before parting with the case, we wish to clarify that nothing said hereinabove shall be construed as any expression of opinion on the merits of complaint filed by the appellant.

The appeal accordingly succeeds and is allowed but without any order as to costs.